[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION]

November 1, 2010

Internal Revenue Service
CC:PA:LPD:PR (NOT-121556-10)
Courier's Desk
1111 Constitution Avenue, NW
Washington, DC 20224

Re: ***Notice 2010-60*** **-- Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code**

Dear Sirs or Madams:

Pursuant to *Notice 2010-60, 2010-37* I.R.B. (the "Notice"),the Canadian Life and Health Insurance Association (the "CLHIA") hereby provides comments on the appropriate treatment of Canadian life insurance companies under Chapter 4 of Subtitle A of the Internal Revenue Code of 1986 (the "Code") n1 and certain related matters. We previously submitted comments on the application of Chapter 4 to Canadian life insurance companies and their affiliates in a letter dated June 15, 2010 (the "Initial Submission").

A. Executive Summary of Comments

Canadian Life Insurance Companies Should Not Be Treated as Foreign Financial Institutions

- Canadian life insurance companies should not be treated as foreign financial institutions ("FFIs")and subjected to the onerous requirements contained in the Notice with regard to their policies and policyholders.

Insurance Policies with Low Risk of Tax Evasion Should Be Excluded from Treatment as "U.S. Accounts"

- The regulations implementing Chapter 4 should reflect the minimal tax evasion risk associated with many insurance products and exempt those products from treatment as "United States accounts," as defined in *section 1471(d)(1)* ("United States Accounts"). Accordingly, the definition of a United States Account should take cognizance of the fact that many insurance products present no reasonable possibility of being

acquired in order to evade United States taxes.

- Policies that constitute Canadian-government registered retirement or savings plans or that are held by such plans are not reasonably susceptible to being acquired in order to evade United States taxes. Accordingly, we urge the Treasury to exclude these policies from the definition of a United States Account for Chapter 4 purposes.

- We also recommend that the Treasury adopt regulations that exclude policies that lack cash value from the definition of United States Accounts. In that regard, we urge the Treasury to adopt a definition of "cash-value" that is consistent with the purpose of Chapter 4 -- namely, to obtain information on investment amounts that otherwise would be taxable to a United States person.

- We further recommend that any group insurance policy that has a cash value be excluded from characterization as a United States Account if the policy does not permit or provide for the cash value to be paid to, or otherwise benefit, the individual group members, provided that the group sponsor/policyholder is not itself a United States person.

Treatment of Existing Policies

- Because of Canadian privacy law concerns, we strongly suggest that you consider other ways of addressing the application of the Chapter 4 rules to existing life insurance policies and annuities and potential recalcitrant policyholders. Given the extremely low risk of United States tax evasion associated with policies issued by Canadian life insurance companies, we urge you to consider grandfathering all of those policies from the application of those rules.

- In the event that you do not provide grandfathering treatment for all existing Canadian policies, we request that you:

  - abandon the proposed rule that would require a life

insurance company to obtain "documentary evidence" with respect to the holders of those policies after the expiration of the contemplated transition period; and

- either:

  (i) adopt "periodic-solicitation" rules similar to the waiver rules that apply to Form 1099 filers who have not been able to obtain taxpayer identification numbers from payees due to inaction on the part of the payees or

  (iii) utilize the information exchange provisions of the United States-Canada income tax treaty (the "US..-Canada Treaty").

Treatment of New Policies

- With respect to new policies, we propose an applicant-waiver process that may allow Canadian life insurers to provide the information required by Chapter 4. In the event that Canadian privacy laws prevent our members from implementing such a waiver process, however, we suggest that you utilize the information exchange or periodic-solicitations approaches recommended with respect to existing policies.

Reporting Recommendations

- We believe that the reports our members currently provide to the Canada Revenue Agency (the "CRA") on payments made to nonresidents of Canada under Canadian life insurance policies and annuities would be a viable alternative to individual reporting of that information by our members directly to the Internal Revenue Service (the "IRS").

- Because of the many differences between insurance policies and investment products generally, we recommend that you consider providing that no information reporting on policies would be required until actual payments are made under the policies. In addition, we recommend that the information required to be reported at that

time be tied more closely to the information required to determine the policyholder's tax liability under *section 72* principles.

- We recommend that insurance companies be allowed to elect to translate amounts into U.S. dollars either at the applicable currency-conversion rate in effect at the end of the relevant tax year or based on the average currency-conversion rate for that year.

Other Recommendations

- We also recommend that self-verification procedures be adopted that would permit certification of a life insurance company's Chapter 4 compliance methodology by a designated high-level management employee of the insurer, rather than by an external auditor.

- We propose that aggregation should not preclude different insurance company members of an "expanded affiliated group" (as defined in *section 1471(e)(2)*) from entering into their own agreements with the IRS under section 1471(b)(1), whether or not other insurance company members of the group have entered into such agreements.

- We recommend that regulations permit branches of insurance companies to certify to withholding agents that the withholdable payment or payments at issue are eligible for the effectively connected income exclusion discussed in the Notice.

- With respect to the identification of beneficiaries of trusts, we recommend that an insurance company that issues a policy to a trust be permitted to rely on a representation or certification from the trustee that the trust has no United States beneficiaries until such time (if ever) that the insurer becomes aware of facts potentially to the contrary. At that time, we believe that the insurer's obligation should be limited to obtaining a subsequent representation or certification from the trustee, if possible.

B. Background

The CLHIA is a voluntary association of Canadian life and health insurers, with members accounting for over 99 percent of Canada's life and health insurance business. The industry provides protection to more than 26 million Canadians (representing approximately 78 percent of Canada's total population) through a wide variety of individual and group insurance products, including (i) term life, whole life, and universal life insurance, (ii) health, disability, and travel insurance, and (iii) fixed and variable annuities. At the end of 2009, the most recent year for which data are available, CLHIA members administered over 13 million individual Canadian life insurance policies, as well as group life insurance policies covering 37 million Canadian certificate holders. n2

Members also administered 3.6 million individual Canadian annuities, as well as group annuities and pension plans covering over 5 million Canadians. CLHIA members hold C$ 475 billion of assets backing their obligations to Canadian policyholders, a significant portion of which is United States investments. n3 Many CLHIA members also have affiliates or branches operating in other jurisdictions, including the United States.

The issues raised in this letter are not exhaustive, although the issues are common to all CLHIA members. Individual members of the CLHIA may have additional issues that they would like to raise with the Treasury or the IRS.

C. Introduction

The CLHIA understands the reasons that Chapter 4 was adopted by the United States and agrees that additional information reporting by certain foreign entities to the IRS is a useful tool to combat tax evasion by United States persons. However, we strongly believe that the means to accomplish that goal should be reasonable in light of all relevant circumstances and that those means should not create an excessive burden on reporting entities where there is little, if any, corresponding benefit to the Treasury or the IRS.

As noted in our Initial Submission, Canadian life insurers do not have significant numbers of United States policyholders. n4 Canadian life insurance companies are prohibited under applicable United States insurance licensing rules from marketing their policies in the United States. n5 In addition, most companies' internal underwriting and marketing guidelines prohibit policy sales to any nonresident of Canada, both because of anti-money laundering and anti-terrorism rules and concerns and because the Canadian residence of potential policyholders is an important factor that insurers take into account in determining how to administer their policies. n6 Canadian insurers who prohibit such sales generally do so by requiring policy applicants to fill out application materials that show a Canadian address and other relevant information (including a Canadian Social Insurance Number n7) and to provide proof of identity. Where such an address or identification is not provided, those insurers will not sell a policy to the applicant.

While we acknowledge that some policyholders of Canadian life insurers may be Canadian-resident United States citizens or United States residents who initially acquired their policies while residing in Canada and then moved to the United States, we believe that the foregoing factors result in United States persons being less than 1 percent of Canadian life insurers' total number of policyholders. n8

In addition, as described in more detail in our Initial Submission, we believe that the taxable nature of Canadian life insurance policies and annuities, combined with the high effective tax rate imposed by Canada on the earnings on such policies, makes them highly unlikely to be used by United States persons to evade United States tax. ***For all of theses reasons, we continue to believe that Canadian life insurance companies should not be treated as FFIs and subjected to the onerous requirements contained in the Notice with regard to their policies and policyholders.***

If, however, you nevertheless determine to treat those insurers as FFIs, we urge you to apply the provisions of Chapter 4 to Canadian life insurance companies in a manner that takes into account:

(i) the fact that many types of Canadian policies have no realistic possibility of being used for United States tax evasion, and

(ii) the difficulty that Canadian life insurance companies will have in complying with the reporting and information-collecting requirements contained in the Notice, particularly with respect to their existing policies.

We discuss each of those points, as well as several other issues, in more detail below.

D. Exclusion of Policies with Low Risk of Tax Evasion from Treatment as United States Accounts

As noted in our Initial Submission, we do not believe that life insurance companies are included in the definitions of "foreign-financial institution" or "financial institution" contained in *sections 1471(d)(4)* and 1471(d)(5). n9 However, we acknowledge that the legislative history of Chapter 4 includes language stating that the Treasury "may prescribe" rules pursuant to which insurance companies will be treated as FFIs for purposes of Chapter 4. n10 Similarly, life insurance policies and annuity contracts n11 are not included in the definitions of "United States account" and "financial account" contained in *sections 1471(d)(1)* and 1471(d)(2). n12 Nevertheless, we recognize that the Technical Explanation states that the Treasury may prescribe rules pursuant to which "certain [insurance] contracts or policies," such as annuities or cash value life insurance policies, will be treated as United States Accounts for purposes of Chapter 4.

We believe that the lack of any express designation of life insurance companies as FFIs and of insurance policies and annuities as United States Accounts, when combined with the "may prescribe" language of the Technical Explanation, effectively cedes to the Treasury the decision as to whether, and to what extent, life insurance companies and their products should be subject to Chapter 4. Given the regulatory discretion provided to the Treasury with respect to insurance companies and products, in the event that the Treasury determines to treat at least some insurance companies as FFIs and at least some life insurance products as United States Accounts, ***the regulations implementing Chapter***

4 should reflect the minimal tax evasion risk associated with many insurance products and exempt those products from treatment as United States Accounts. The purpose of Chapter 4 is to identify holders of United States Accounts in FFIs who may not be reporting all of their taxable income, and who are thereby evading United States taxes on that income. Accordingly, ***the definition of a United States Account should take cognizance of the fact that many insurance products present no reasonable possibility of being acquired in order to evade United States taxes, as described below.***

1. Retirement Plan Policies

In section II.C. of the Notice, the IRS noted that *section 1471(a)* withholding does not apply to any payment "to the extent that the beneficial owner of the payment is part of a class of persons indentified by the Secretary for purposes of *section 1471(f)* as posing a low risk of tax evasion." The IRS then stated that it did not expect withholding would be required in regard to payments to certain "foreign-retirement plans" that pose a low risk of such evasion. It also solicited comments on whether "other-categories of foreign employee benefit or deferred compensation plans" should be subject to the same treatment for Chapter 4 purposes.

a. Policies that Constitute Retirement Plans

Although the focus of *section 1471(f)* and the Notice in respect of these retirement plans is on otherwise-withholdable payments made to the plans, we believe the "low-risk of tax evasion" determination underlying the proposed treatment of those payments supports treating insurance policies and annuities that are treated as retirement plans as similarly lacking the potential for United States tax evasion and therefore as not constituting United States Accounts for purposes of Chapter 4. In this regard, certain of the policies issued by life insurance companies:

- are established solely for retirement-related purposes;
- qualify as actual retirement plans under the laws of the countries in which they are established;
- are registered with a governmental entity as retirement plans;
- have comparatively low annual or lifetime contribution limits tied to employment or other earned income; and
- are taxable by the foreign countries in which they are established, either currently or as payments are made.

Because of such limitations, such products present a very low risk of United States tax evasion.

In the case of policies issued by Canadian insurance companies, three types of policies constitute retirement plans that satisfy the foregoing criteria: Registered Pension Plans ("RPPs"),Registered Retirement Savings Plans ("RRSPs"), and Registered Retirement Income Funds ("RRIFs"). n13 A more detailed description of each type of plan is attached to this letter as Exhibit A, but all three:

- constitute retirement plans under Canadian law;
- must be registered with the CRA;
- have contribution limits tied to employment or other income earned in Canada;
- are taxable by Canada as payments are made (either directly, in the case of Canadian residents, or through withholding, in the case of Canadian nonresidents);
- are subject to penalties under Canadian law for excessive contributions; n14 and
- are subject to strict CRA reporting requirements with respect to all contributions to, and payments from, the plans.

In addition, we note that all three types of plans are analogous to IRAs and 401(k) plans under United States law and that they are treated as private pension vehicles under the U.S.-Canada Treaty.

b. Policies Held by Retirement Plans

Although policies issued by Canadian insurance companies can constitute RPPs, RRSPs, and RRIFs under Canadian law, in other cases the RPPs, RRSPs, and RRIFs are organized as Canadian trusts that themselves constitute the Canadian retirement plans. In such cases, the policies are acquired by retirement plans, rather than constituting the plans. Policies may also be acquired by Deferred Profit Sharing Plans ("DPSPs"),another form of registered retirement plan established under Canadian law. n15 In all of those cases, the policies are merely retirement plan assets. The RPPs, RRSPs, RRIFs, and DPSPs in these situations satisfy all of the criteria set forth above regarding retirement plans. In particular, they:

- are established solely for retirement-related purposes;
- are registered with the CRA as retirement plans;
- have comparatively low annual or lifetime contribution limits tied to employment or other income in Canada;

- are subject to penalties under Canadian law for excessive contributions; and

- are subject to strict CRA reporting requirements with respect to all contributions to, and payments from, the plans.

In addition, payments from these plans are taxable by Canada as payments are made, and all insurance policies or annuities held by the plans are held solely in furtherance of the plans' functions as retirement plans. Because of these limitations, the policies held by these plans similarly present a very low risk of United States tax evasion.

c. Recommendation

As a consequence of the foregoing restrictions and limitations, ***all of the policies described above, whether they constitute retirement plans in their own right under Canadian law or are held by Canadian trusts that constitute retirement plans (collectively, "Retirement Plan Policies"), are not reasonably susceptible to being acquired in order to evade United States taxes. Accordingly, we urge the Treasury to exclude all Retirement Plan Policies from the definition of a United States Account for Chapter 4 purposes.***

2. Tax-Free Savings Accounts

Under Canadian law, beginning in 2009, Canadian residents who are 18 years of age or older may establish savings plans ("Tax-Free Savings Accounts," or "TFSAs") that are accorded special tax treatment. In the case of such a plan established with an insurance company, it takes the form of an annuity. Contributions to the plan are not deductible, but payments from the plan are not subject to Canadian tax. Plans must be registered with the CRA, contributions to a plan may be made only by Canadian residents, and all contributions to and payments from a plan must be reported to the CRA by the issuing insurance company. Only C$ 5,000 may be contributed to a plan each year (subject to indexing based on changes to a consumer price index), although unused contribution limits roll over to succeeding years.

Although TFSAs are not, strictly speaking, "retirement-plans" under Canadian law, they serve a similar purpose -- namely, to encourage savings for future expenses, including retirement. n16 Moreover, the contribution limits obviously are quite low. In that regard, we note that, consistent with *section 1471(d)(1)(B)*, the Notice acknowledges that depository accounts with low balances will not be treated as United States Accounts and that the Treasury has the authority under *section 1471(d)(2)* to exempt other accounts from treatment as "financial-accounts" (and therefore as United States Accounts). We believe that TFSAs are analogous to such depository accounts and that they similarly should be accorded favorable treatment under Chapter 4. We believe it is obvious that TFSAs have a very low risk of United States tax evasion potential because of:

- their low contribution limits;

- the strict reporting requirements that apply to both contributions and withdrawals;

- the CRA monitoring that occurs with respect to such contributions and withdrawals;

- the fact that TFSAs cannot be sold to nonresidents of Canada; and

- the fact that contributions cannot be made by nonresidents of Canada.

Accordingly, we urge the Treasury to exclude TFSAs (and similar government-registered savings or retirement accounts) from the definition of United States Accounts.

3. Policies Held by Other Registered Savings Accounts

Canadian law provides for two other forms of savings vehicles that are required to be registered with the CRA: n17 Registered Education Savings Plans ("RESPs") and Registered Disability Savings Plans ("RDSPs") n18 . They take the form of Canadian trusts and, like TFSAs and other plans required to be registered under Canadian law, have significant restrictions and limitations. In particular, they are:

- subject to maximum contribution limits;

- subject to strict reporting and monitoring requirements; and

- only permitted to be used for specific purposes.

In some cases, RESPs and RDSPs purchase insurance policies or annuities as trust assets. In addition, a TFSA can be organized as a Canadian trust, and the trust can acquire an annuity as a trust asset (rather than the annuity itself constituting the TFSA, as described in the prior section of this letter). Due to the limits placed on each type of registered savings plan, we believe that there is a very low risk of United States tax evasion associated with all such policies. Accordingly, ***we request that any policy held by an RESP, RDSP, or trusteed TFSA also be excluded from the definition of a United States Account.***

4. Policies without Cash Value

Both the Technical Explanation and the Notice contemplate that insurance policies without "cash-value" will be excluded from the definition of United States Accounts for purposes of Chapter 4. The reason for this exclusion seems obvious -- if a policy does not contain a feature under which

the policyholder can access imbedded earnings or gain on the policy, there is no means by which the policyholder can derive taxable income from the policy. Thus, there is no opportunity to evade United States tax and no reason to require the issuer of such a policy to provide the information required by Chapter 4.

We urge the Treasury to adopt regulations that exclude policies that lack cash value from the definition of United States Accounts. We also urge the Treasury to adopt a definition of "cash value" that is consistent with the purpose of Chapter 4 -- namely, to obtain information on investment amounts that otherwise would be taxable to a United States person. Under this approach, typical property and casualty insurance policies and term life insurance policies would not be treated as covered policies, as such contracts would not have "inside-build-up" or other imbedded gain.

As a colloquial matter, the term "cash-value" generally is understood to mean "cash surrender value" (which may or may not exclude surrender charges, depending on the context in which the term is used). That definition is implicit in *section 264(f)(3)*, which defines "unborrowed policy cash value," and *section 805(a)(4)(F)(ii)*, which defines "adjusted cash value." Proposed regulations under *section* 7702 contain a more extensive definition of the term "cash value." Under those proposed regulations, the cash value of a policy generally is the greater of the maximum amount payable under the policy (determined without regard to any surrender charge or policy loan) and the maximum amount that the policyholder can borrow under the policy. Prop. Treas. Reg. section 1.7702-2(b). The proposed regulations then exclude certain amounts from the cash value calculation, including the amount of any death benefit payable under the policy. *Id.*

Although we believe that the definition of cash value in the proposed regulations is a useful starting point for the definition of cash value for Chapter 4 purposes, we note that the definition is deficient in a number of respects. It would not exclude, for example, a typical property insurance policy, as every such policy would have a significant maximum amount payable that is not eliminated under that definition. Similarly, it would not exclude a typical term life policy, as such a policy commonly would have a refundable unearned premium amount based on the policyholder's rights to terminate the policy after the premium was paid and before the term expired. Given that both the Technical Explanation and the Notice assume that such policies would not constitute United States Accounts, it is clear that the definition of cash value for Chapter 4 purposes must differ from that in the proposed regulations.

Moreover, we note that the proposed definition was intended to be used for the purpose of determining under *section* 7702 whether an insurance policy constituted true life insurance for United States federal income tax purposes, not for the purpose of determining how much of a policy's cash value represents a taxable amount (and not a mere return of tax basis). Accordingly, we believe that the definition of cash value in the proposed regulations would not adequately reflect the focus of Chapter 4, which is on the receipt by United States persons of potentially taxable amounts. Under *section* 72, only a portion of the amount of proceeds received by a policyholder from a life insurance policy or annuity is taxable; the remainder is treated as a return of basis. Pursuant to *section 72(b)(1)*, for example, a taxpayer has gross income received as an annuity only to the extent that the annuity payments represent earnings under the underlying insurance policy or annuity contract. No amount

is taxable to the extent that the annuity payment consists of the policyholder's investment in the underlying policy. A similar approach applies under *section* 72(e)(2), which deals with any non-annuity payment received under an insurance policy or annuity contract. In any such case, only the excess of the cash surrender value in excess of the policyholder's investment in the contract is taxable, with the remaining proceeds being considered a return of basis.

In light of these deficiencies in the definition in the proposed regulations, and to ensure that only those policies that have an investment element that would be taxable by the United States are treated as United States Accounts, we recommend that the term "cash value" be defined as follows for purposes of the Chapter 4 rules:

An insurance policy (including a policy of reinsurance) or annuity contract will be considered to have "cash-value" for purposes of [the Chapter 4 provisions] only if the greater of:

(i) the maximum amount payable under the policy or contract (determined without regard to any surrender charge or policy loan, but exclusive of the amount of any benefit payable as a result of the insured loss) and

(ii) the maximum amount that the policyholder can borrow under the policy or contract

can exceed the amount of the policyholder's investment in the policy or contract as of any date.

A policyholder's investment in a policy or contract as of any date is the excess (if any) of:

(i) the aggregate amount of premiums or other consideration paid for the policy or contract as of such date (determined without regard to charges or expenses imposed by the insurer) less

(ii) the aggregate amount received by the policyholder under the policy or contract before such date, to the extent that such amount was excludable from the policyholder's gross income under subtitle A of the Internal Revenue Code.   n19

The foregoing definition would treat as United States Accounts only those policies that have an investment element that would be taxable under United States law. It would not pick up most term life insurance policies (because their death benefits would be excluded from the computation of cash value and because any refundable unearned premium would be less than the aggregate amount of premiums paid) or most property and casualty policies (because their insured-against loss benefits would be excluded and because any refundable unearned premium also would be less than the aggregate

amount of premiums paid). It would also exclude other policies that pay only death or other insured-against loss benefits (such as most group life insurance policies) or that would not give rise to income taxable under *section 72* principles.

5. Group Insurance Policies

Group insurance policies (specifically, group life, accident, disability, and health policies) are purchased by employers, fraternal, social, and charitable organizations, and other groups for the benefit of a discrete group of individuals. Most of such insurance policies have no cash value and should be excluded from characterization as United States Accounts for the reasons discussed in the prior section of this letter.

Even if a group insurance policy has a cash value, however, we believe that most of such policies also should be excluded from the definition of a United States Account, as that cash value generally cannot inure to the benefit of the individual group members.

Accordingly, although it is conceivable that a United States person could be a participant under a group insurance policy that had cash value (because, for example, he or she worked for a Canadian employer in Canada who purchased such a policy for its employees), under most types of such policies, that United States person could never realize any amount of such cash value.

In view of these factors, ***we also urge the Treasury to exclude from the definition of United States Accounts any cash-value group insurance policy that does not permit or provide for the cash value to be paid to, or otherwise benefit, the individual group members, provided that the group sponsor/policyholder is not itself a United States person.*** That exclusion would take cognizance of the fact that no United States tax evasion could occur with respect to that type of policy.

E. Reasonable Limits on the Application of Chapter 4 to Canadian Life Insurers

Although many types of policies issued by Canadian life insurance companies would not be characterized as United States Accounts if the foregoing recommendations are adopted, other types of policies issued by those companies still could constitute United States Accounts under an expansive definition of that term. In that case, Canadian life insurance companies presumably would be subject to the FFI due diligence rules that are set forth in Section III of the Notice with respect to those policies and their holders. As you know, those rules have two principal components: (i) FFIs must identify their United States Account owners and (ii) FFIs must disclose to the IRS certain information related to those persons and their accounts. Both of these requirements would present difficult compliance issues for our members, particularly in respect of existing policies.

1. Existing Policies

For existing United States Accounts, the Notice proposes that regulations will provide that, for a limited transition period, FFIs may rely on searches of their existing electronic records to determine if

account owners are United States persons. During that period, if an FFI finds "indicia of potential U.S. status," it must obtain a Form W-9 or Form W-8BEN from the relevant account owner or otherwise confirm the account owner's status as a United States person or non-United States person, as the case may be. In the event that it cannot obtain the information, it must treat the account owner as a "recalcitrant account owner," which potentially could lead to adverse consequences to the FFI or the account owner. After the expiration of the transition period, FFIs apparently would be required to obtain "documentary-evidence" of the United States status or non-United States status of each account owner, regardless of whether any indicia of United States nexus appeared in the records of the FFI. Although the Notice does not define "documentary evidence" for this purpose, by analogy to *Treas. Reg. section 1.1441-6(c)(4)(i)*, ***we recommend that documentary evidence be defined to include any government-issued documentation showing the name and residence of the holder.*** n20

We generally do not object to the requirement that our members conduct searches of their electronic records to find evidence of potential United States nexus of their policyholders. n21 However, we do object to the requirement that our members obtain "documentary evidence" of the status of their existing ***26 million policyholders*** following the expiration of the transition period. Not only do we believe that it would be a practical impossibility to obtain that information, as our members have no ability to force policyholders to comply with a request to provide the information, but we believe that the costs of obtaining and processing the information would be vastly disproportionate to the benefits to the IRS of having the information.

We also do not understand the ramifications of our members being unable to provide the information required with respect to existing policies. As outlined in our Initial Submission, our members cannot, under applicable Canadian law, either terminate a policy or withhold on a policy of a recalcitrant policyholder, as the policies are contracts that cannot unilaterally be terminated or modified. Consequently, it is unclear what the effect would be of having a large number of recalcitrant account owners, although one apparent possible outcome -- which we believe would be highly disadvantageous both to our members and, ultimately, the capital markets of the United States -- would be that 30-percent withholding would apply to all payments of "withholdable payments" by United States payors to our members.

The requirement that our members provide information to the IRS about certain of their policyholders is even more problematic. Canadian businesses are subject to Canada's Personal Information Protection and Electronic Documents Act ("PIPEDA") and substantially similar laws that have been enacted by several Canadian provinces (collectively, "Canadian Privacy Laws"). We have been advised by legal counsel that those laws prohibit Canadian life insurance companies from disclosing any personal data relating to a policyholder (including all of the information required to be provided by Chapter 4) except as permitted by Canadian laws, regulations, or similar authorities or pursuant to a consent or waiver granted by the policyholder. n22 Thus, absent the application of one of those exceptions, our members simply would not be allowed under Canadian Privacy Laws to provide to the IRS the information required by Chapter 4.

However, none of our members' existing policies contain any consent to a disclosure of Chapter 4 information or any waiver by the policyholder of his or her Canadian Privacy Law rights. In addition,

no current provision of Canadian law requires or permits Canadian life insurance companies to provide to the CRA or any other Canadian governmental entity, let alone the IRS, much of the information contemplated by Chapter 4. Accordingly, the only way a Canadian insurer could provide such information would be to obtain an affirmative waiver by each potential United States policyholder of those rights, assuming that such a waiver would be acceptable under Canadian Privacy Laws.

In this regard, we do not believe that is realistic to expect that the holders of existing Canadian life insurance policies or annuities would consent to such waivers, inasmuch as the policyholders have no legal or contractual obligation to grant a waiver or otherwise comply with the provisions of Chapter 4. The industry's extensive experience in dealing with its policyholders strongly suggests that a very large percentage of those policyholders would not provide the waiver, either because they would not receive or would ignore the request, n23 they would believe that the request does not apply to them as citizens or residents of Canada, or they would resent being asked to provide the waiver merely because the United States government wants access to their personal data. Accordingly, although our members are willing to attempt to contact existing policyholders and request waivers that would allow the members to provide the required information with respect to policies that constitute United States Accounts, our members would have no ability to require that the policyholders provide the waivers and no recourse in the event of a non-response to, or denial of, the requests. As a result, our members are likely to have a very large percentage of recalcitrant account owners with respect to their existing policies.

Because of the foregoing issues, we strongly suggest that you consider other ways of addressing the application of the Chapter 4 rules to existing life insurance policies and annuities. Given the extremely low risk of United States tax evasion associated with policies issued by Canadian life insurance companies, we urge you to consider grandfathering all of those policies from the application of those rules. We believe that the broad regulatory authority provided by *sections 1471(d)(2)* and 1474(f) would permit such a grandfathering rule. Insurance companies are not statutory FFIs (unlike, for example, depository banks), but would be treated as FFIs only as a result of your exercise of the regulatory authority under Chapter 4. Accordingly, we believe that your exercise of that regulatory authority would permit you to provide different grandfathering rules for insurance companies than for statutory FFIs. Such a grandfathering rule would not facilitate United States tax evasion with respect to those existing policies. As noted above and in our Initial Submission, it is highly unlikely that any United States person would ever have acquired such a policy with tax evasion in mind due to the high Canadian tax cost associated with such policies and the sales limitations imposed on those policies.

In the event that you do not provide grandfathering treatment for all existing Canadian policies, we urge you to:

- ***abandon the proposed rule that would require a life insurance company to obtain "documentary evidence" with respect to the holders of those policies after the expiration of the contemplated transition period;*** n24 ***and***

- ***adopt rules similar to the waiver rules that apply to Form 1099 filers that have not been able to obtain taxpayer identification numbers from a payee due to inaction on the part of a payee.***

Under this proposal, after a life insurer identified policyholders with United States indicia from its electronically searchable files, it would solicit documentation from such policyholders under required periodic solicitations similar to those required for reasonable-cause relief under *Treas. Reg. section 301.6724-1(c)* and (d). A life insurance company that followed the prescribed procedures relating to solicitations would be deemed to meet its due diligence obligations under Chapter 4.

We also urge you to give serious consideration to obtaining the information contemplated by Chapter 4 through application of the existing exchange of information procedures under the U.S.-Canada Treaty. Current procedures already permit the IRS to obtain information on United States citizens and residents with Canadian source income. *See, e.g.*, *Treas. Reg. section 1.6049-4(b)(5)* and 1.6049-8 and *T.D. 8664* (Apr. 15, 1996). Use of the existing exchange-of-information procedures under the U.S.-Canada Treaty to obtain the information contemplated by Chapter 4 with regard to policyholders who have indicia of a United States nexus would be wholly consistent with the approach taken in those regulations. Moreover, it potentially could minimize, if not eliminate, the Canadian Privacy Law issues described above and would be significantly less burdensome to Canadian life insurance companies than alternative approaches. We strongly urge you to consider how those existing procedures could be applied or adapted for Chapter 4 reporting purposes. ***Other government-to-government solutions may also be possible, and we ask you to consider pursuing those approaches, rather than imposing reporting and information-collecting requirements on Canadian life insurance companies that may be unlawful or impossible to implement.***

2. New Policies

In the case of new policies, we are exploring with privacy counsel the possibility that, under Canadian Privacy Laws, applications for those policies could require a potential policyholder to:

- disclose his or her United States citizenship and social security number (if any);

- provide documentary proof of his or her Canadian residency; n25

- if the policyholder is a United States citizen, waive his or her privacy rights with respect to the information required by Chapter 4; and

- if the policyholder is not a United States citizen, the insurer subsequently finds indicia of United

States status with respect to the policyholder, and
the policyholder fails to provide adequate documentation
establishing his or her non-United States status
at that time, either:

(i) waive his or her privacy rights with respect to
such information or

(ii) allow termination of his or her policy.

Counsel believe that the terms of such waivers may be permissible, but are still considering the issue and seeking to obtain the views of the Office of the Privacy Commissioner of Canada, the Canadian federal governmental office charged with enforcement of PIPEDA, n26 on the matter. n27

In the event that, due to Canadian Privacy Laws, a waiver provision is not permitted to be included in policies issued by our members, we revert to the suggestions above as to the steps that insurers or the IRS could take in attempting to obtain the Chapter 4 information. We see no other alternatives to those steps, given the potential application of Canadian Privacy Laws to disclosure of that information.

F. Passthru Payments

The concept of "passthru" payments under Chapter 4 is an example of a concept that may function in the custodial or depository institution model, but that raises impossible issues of application and implementation in the life insurance company context. A policyholder does not have a custodial or similar account with the insurance company that issued the relevant policy, but rather a contractual promise from the company that the policyholder will be paid a fixed amount or amounts upon the happening of a particular event or events or at periodic intervals. Accordingly, passthru withholding is not permitted under Canadian law. Moreover, even if withholding were permissible, tracing a particular withholdable payment from a United States payor through the issuing life insurance company to a particular policy simply would not be possible. Thus, for a life insurance company, only some form of withholdable-payment allocation methodology possibly could apply. However, even this approach would raise impossible allocation issues, given the need to take into account:

- the timing of such earnings, premium payments, and policy payouts;

- the required crediting of premiums and earnings to the cash value of policies, the implicit cost of insurance associated with all policies, and the expenses and surplus of the company;

- the fact that, due to adverse underwriting or investment decisions, no portion of the earnings on an investment

actually may be allocable to a policy, as the actual source of a policy's cash value or payments may be the surplus of the insurer, premiums from other policyholders, or other sources; and

- numerous other factors.

We are unable to provide any workable solution to these allocation problems and believe that, even if a life insurance policy or annuity could be drafted to permit withholding under certain circumstances, the passthru withholding approach simply could not rationally be applied to insurance policies or annuities.

G. Sanctions for Long-Term Recalcitrant Account Holders

The Notice requests comments concerning possible sanctions (including termination of an FFI agreement) if an FFI has long-term recalcitrant account holders. Such a termination presumably would result in 30-percent withholding being imposed on ***all*** withholdable payments made to that FFI.

For the reasons discussed above, particularly if you do not adopt relief measures for existing life insurance policies and annuities, it is easy to envision situations in which life insurance companies (including our members) could have significant numbers of recalcitrant account holders that are not United States persons. That result could occur, despite an intense investment of time and effort by the companies to obtain the required information, simply because of the failure of existing policyholders to provide information as requested or to consent to waivers.

As discussed above, our members' options at that point would be severely limited. They would not be able to terminate an existing policy or to withhold on that policy, even if it were possible to apply passthru withholding to insurance policies or annuities. Accordingly, no "penalty" could be imposed on a recalcitrant policyholder, even though it would have been the policyholder's inaction that would have created the recalcitrance. As that situation would be beyond the control of the insurance company, we strongly urge you not to provide that an FFI agreement with the insurer would be terminated under these circumstances. Instead, ***you should avoid the issue of recalcitrant policyholders on existing policies by:***

- ***grandfathering those policies;***

- ***utilizing the information exchange provisions of the U.S.- Canada Treaty as discussed above; or***

- ***adopting the periodic-solicitations approach discussed above by analogy to Treas. Reg. section 301.6724-1(c) and (d).***

If you adopt the periodic-solicitations approach suggested above, it may be appropriate to apply sanctions, including possibly terminating the relevant FFI agreement, against an insurance company that continually fails to comply with the terms of its FFI agreement by not making the required solicitations. Moreover, in the event that it is possible to include privacy-law waiver provisions in new policies as discussed above, it also may be appropriate to apply sanctions against an insurance company that fails to do so or that continually fails to comply with the terms of its FFI agreement.

H. Reporting Requirements

Section V.H. of the Notice requests comments on whether information required to be collected and reported by FFIs under Chapter 4 may already be available to the IRS through other means. In this regard, we believe that ***the reporting our members currently provide to the CRA on payments made to nonresidents of Canada under Canadian life insurance policies and annuities would be a viable alternative to individual reporting of that information by our members directly to the IRS.*** That information already reflects the identity of the United States person receiving the payments and the amount of the payment. Moreover, we understand that the information contained in these reports is already being provided to the IRS by the CRA pursuant to Article XXVII of the U.S.-Canada Treaty.

As noted above, in the event that the IRS would like additional information regarding these payments or information regarding other United States persons who own policies issued by Canadian life insurance companies, the IRS has the ability under the U.S.-Canada Treaty to obtain that information by making an appropriate request to the CRA. That information exchange mechanism is already operating, and it presumably could be expanded to permit the IRS to obtain whatever information it needs under the provisions of Chapter 4. ***Use of those exchange-of-information procedures would pose the least burdensome solution for Canadian FFIs, and we accordingly urge their adoption to satisfy the Chapter 4 reporting requirements.***

Should the Treasury not adopt our suggestion to rely on the Article XXVII information exchange procedures in lieu of requiring reporting by our members, we are concerned that the information required to be reported under Chapter 4 is not consistent with the information relevant to the United States taxation of life insurance policies and annuities. Section IV of *Notice 2010-60* provides details about the information required to be reported under Chapter 4, including account balances, gross receipts, and gross withdrawals. This list of information reflects the depository institution model and would need to be adapted to apply to other types of FFIs, including life insurance companies treated as FFIs. For example, (i) life insurance policies and annuities that are not in payout status do not have an "account balance," (ii) the premiums paid for such policies reflect an insurance element, as well as an investment element, and (iii) policyholders may not be taxable currently on amounts credited to their policies' cash values. All of these factors (as well as many more) distinguish an "investment" in a life insurance policy or annuity from an investment in another type of financial interest and warrant the application of insurance-oriented reporting requirements for life insurance policies and annuities that constitute United States Accounts.

Because of the many differences between insurance policies and investment products generally, we recommend that you consider providing that no information reporting on policies would be required until actual payments are made under the policies. In addition, we recommend that the information required to be reported at that time be tied more closely to the information required to determine the policyholder's tax liability under section 72 principles. In order to implement these suggestions, you may wish to consider adopting a form of FFI agreement that would be specifically applicable to life insurance companies.

We are further concerned about the requirement stated in the Notice that all amounts required to be reported by FFIs must be reported in U.S. dollars. Like other Canadian businesses, Canadian life insurers conduct their Canadian business, prepare financial reports, file Canadian tax returns and information returns, and maintain records in Canadian dollars. They generally are not required to translate their data into other currencies, including U.S. dollars, for any reason. Thus, the requirement to report information required under Chapter 4 to the IRS in U.S. dollars would require our members to purchase or develop new software, change their technology systems, and incur other expenses. Due to the potential costs of making these changes, our members are concerned about the required frequency of currency conversions and reporting. ***In order to minimize those costs, we suggest that reporting be required only on payouts from life insurance policies and annuities and that insurance companies be allowed to elect to translate amounts into U.S. dollars either at the applicable currency conversion rate in effect at the end of the relevant tax year or based on the average currency conversion rate for that year.*** Limiting the number of required currency conversions in this manner would achieve significant cost savings without materially compromising the usefulness of the reported information to the IRS.

I. Verification Requirements

Section V.A. of the Notice requests comments on verification procedures that may be implemented to assure that the due diligence procedures mandated under the Notice are followed. Our members believe that ***reliance on a certification by a designated high-level management employee should be adopted.*** The certification statement should include a description of the procedures and documents employed by the FFI to perform its due diligence obligations.

For Canadian life insurers, requiring outside auditors to verify compliance with Chapter 4 would be a cost that would be greatly out of proportion in relation to the number of potential United States Accounts that would be implicated by those procedures. As noted above, we estimate that less than 1 percent of our members' policyholders are United States persons, and we do not believe that our members should be required to incur costs to engage outside auditors to verify the procedures that would be used to identify and report on the small numbers of those persons or their United States Accounts. Accordingly, ***we urge you to permit self-verification procedures as described above.***

J. Aggregation of Corporate Groups

As noted in our Initial Submission, some of the members of the CLHIA are part of a combined group of Canadian corporations, and other members have life insurance affiliates that are located in

jurisdictions other than Canada. Although certain provisions of Chapter 4 appear to contemplate the potential aggregation of FFI affiliates for some purposes, we do not believe that aggregation should be required in one important respect. Specifically, ***aggregation should not preclude different members of an "expanded affiliated group" (as defined in section 1471(e)(2)) from entering into their own agreements with the IRS under section 1471(b)(1), whether or not other members of the group have entered into such agreements.*** Some of the non-Canadian affiliates of our members may have no or only very few United States persons as policyholders or may be able to provide the information required by *section 1471* more easily than other members of the group. Other affiliates initially may be unable to provide the required information and may have to accept the imposition of a withholding tax under the statute. Under such circumstances, life insurance company FFIs that are able to comply with *section 1471* should be able to enter into agreements with the IRS even if their affiliates may not be in a position to do so.

In this regard, we note that the Notice provides for an entity-by-entity determination for purposes of the $ 50,000 depository exception contained in *section 1471(d)(B)*. We urge you to apply the same entity-by-entity approach for FFI agreements.

K. Branch Issues

Although the definition of an FFI under Chapter 4 does not exclude an FFI with a United States branch, the definition of a "withholdable-payment" for those purposes does exclude payments that will be included in United States gross income under *section 871(b)(1)* or 882(a)(1) as income effectively connected to a United States trade or business. The Notice accurately points out that this "ECI exclusion" does not apply to all payments made to a United States branch, but only to those payments that are made to the United States branch for its own account and that are reported on a United States tax return. A payment a United States branch receives on behalf of its account holders or that is not effectively connected is not eligible for the ECI exclusion.

Section II.D.1. of the Notice seems to make contradictory statements about the application of the FFI agreement requirement to branches of FFIs. First, it states that an FFI will not be exempted from having to enter into an FFI agreement "even if the FFI receives withholdable payments solely through its U.S. branch." The next sentence of the Notice, however, states as follows: "Thus,where a U.S. branch of an FFI receives withholdable payments that are not eligible for the ECI exclusion, the FFI generally will be required to enter into an FFI agreement to avoid being subjected to withholding under *section 1471(a)*." We assume that the second sentence refers only to those payments that are not subject to the ECI exception. Thus, it would appear that an FFI whose only United States source payments are eligible for the ECI exception should not be required to enter into an FFI agreement, as the only payments the FFI receives are not withholdable payments under the definition of withholdable payments contained in *section 1473(1)(B)*. ***We request that you issue guidance to make it clear that an FFI agreement would not be required if the branch certifies (perhaps on a schedule attached to its normal United States tax return) that all of the withholdable payments that it receives are eligible for the ECI exception.***

The Notice also provides that the special presumption under *Treas. Reg. section 1.1441-4(a)(2)(ii)*, which treats a payment made to a United States branch of an insurance company as an ECI payment without documentation to that effect, will not be applicable in the Chapter 4 context and requests comments on other methods that withholding agents could use to determine application of the ECI exclusion. ***We recommend that regulations permit branches of insurance companies to certify to withholding agents that the withholdable payment or payments at issue are eligible for the ECI exclusion.***

L. Policies Owned by Trusts

Although the Notice does not discuss in detail the manner in which FFIs are expected to deal with the holders of United States Accounts or potential United States Accounts that are trusts, n28 we note that unique issues are presented by that form of ownership. In the case of life insurance companies, it is not unusual to have policyholders that are trusts created for the benefit of minors, for estate planning purposes, or for other valid, non-tax purposes. Moreover, in the case of our members and their affiliates, such trusts typically would not be formed under United States law.

Some of those trusts may be considered separate taxpayers under United States tax principles, and others may be considered grantor trusts in which the settlor or another person may be considered the owner of the trust's assets, at least from a United States tax perspective. We believe it is obvious that an insurance company (particularly a non-United States insurance company) does not have the ability to determine, for United States tax purposes, the true "tax owner" of a policy owned by a trust. That issue easily could involve difficult legal questions associated with the applicable trust documents or require an analysis and interpretation of foreign trust law or United States tax law. Moreover, even if it were possible to make a determination of tax ownership at the time of a trust's acquisition of a policy, it is clear that the trust documentation could be amended later without the knowledge of the insurer, the status of the trust could change due to the occurrence of later events, or there could be a change in the trust's beneficiaries, any of which could result in the initial determination no longer being correct.

Because of these issues, we believe that, in the case of a policy sold or issued to a trust, the regulations provided under Chapter 4 should allow the issuing insurance company to rely on a representation or certification from the trustee of the trust as to the nature of the trust for United States tax purposes and as to the absence of facts that would cause the trust to be treated as a United States person or any United States settlor or beneficiary of the trust to be treated as the owner of the policy. ***The insurer should be permitted to rely on that representation or certification until it becomes aware of facts potentially to the contrary, at which time its obligation should be limited to obtaining a subsequent representation or certification from the trustee, if possible.*** If the trustee could not or would not provide that representation or certification, we believe it would then be appropriate for the insurer to treat the trust as the holder of a United States Account and, subject to our other comments above, to provide Chapter 4 reporting to the IRS with respect to the policy (and the trust) from that date forward. In this regard, and contrary to the implication reflected in the Notice concerning "small-family trusts," we note that, in a case in which the trustee cannot or does not provide the representation or certification, it may not be possible for the insurer to identify the United States per-

sons who have an interest in the trust and provide Chapter 4 information to the IRS with respect to those persons.

M. Conclusion

The CLHIA appreciates the opportunity to provide these comments and would be more than willing to meet with the IRS or the Treasury to discuss our comments in more detail. Please contact the undersigned or our counsel (Michael Miles, Sutherland Asbill & Brennan, 202/383-0204) if you have any questions about this letter or would like to meet with us.

Sincerely yours,

Steven W. Easson, FCIA, FSA, CFA
Vice President and Chief Actuary

FOOTNOTES:

n1

Chapter 4 comprises new *sections 1471-1474 of the Code*. Except as otherwise noted, all section references in this letter are to the Code.

n2

Individuals may be protected under both individual and group insurance policies and may be covered under more than one group insurance policy (for example, under both employer plans and separate mortgage and/or credit card coverage).

n3

We estimate that United States investments of our members are in excess of C$ 30 billion.

n4

The most notable exception to this rule is for the small number of Canadian insurers who maintain United States branches, which do sell policies to United States persons. In the case of such branch operations, however, the branches are already subject to United States tax reporting requirements. With the exception of the discussion in Section J., below, this letter does not further address the United States branches of Canadian insurers.

n5

See, e.g., Mich. Comp. Laws section 500.402 ("No person shall act as an insurer and no insurer shall issue any policy or otherwise transact insurance in this state except as authorized by a subsisting certificate of authority granted to it by the commissioner pursuant to this code."); N.Y. Ins. Laws *section 1102(a)* ("Noperson, firm, association, corporation or joint-stock company shall do an insurance business in this state unless authorized by a license in force pursuant to the provisions of this chapter, or exempted by the provisions of this chapter from such requirement."); 40 Pa. Stat. Ann. *section 46*:

> (a) No insurance company, association, or exchange of another state or foreign government shall do an insurance business within this Commonwealth without first having obtained a certificate of authority from the Insurance Commissioner authorizing such company, association or exchange to do such business. . . .
>
> (b) Any of the following acts constitute the doing of an insurance business within this Commonwealth, whether effected by mail or otherwise:
>
> (1) the issuance or delivery of contracts of insurance to persons resident in this Commonwealth, or
>
> (2) the solicitation of applications for such contracts, or other negotiations preliminary to execution of such contracts, or
>
> (3) the collection of premiums, membership fees, assessments or other consideration for such contracts, or
>
> (4) the transaction of matters subsequent to execution of such contracts and arising out of them.

n6

Even where a sale to a nonresident is permitted by a Canadian insurer, no policy will be issued unless the insured risk (which, in the case of an annuity, is the annuitant) is a resident of Canada and information is provided to the insurer demonstrating that residency.

n7

Canadian Social Insurance Numbers are analogous to United States social security numbers.

n8

This figure excludes policies sold by United States branches of Canadian insurers.

n9

Life insurance companies do not accept deposits in the ordinary course of a banking or similar business, hold financial assets for the account of others, or engage primarily in the business of investing, reinvesting, or trading in securities or similar financial instruments. *See section 1471(d)(5).*

n10

The relevant language appears in the Technical Explanation Of The Revenue Provisions Contained In Senate Amendment 3310, The "Hiring Incentives To Restore Employment Act," Under Consideration By The Senate, JCX-4-10, Jt. Comm. on Tax. Staff, Feb. 23, 2010 (the "Technical Explanation").

n11

For purposes of this letter, we generally refer to annuity contracts as "annuities" or "policies," to insurance contracts as "policies," and to the owners of both annuities and insurance policies as "policyholders."

n12

Insurance policies and annuities are not depository accounts, custodial accounts, or equity or debt instruments in FFIs. *See section 1471(d)(2).*

n13

Under Canadian law, these "plans" can take different forms. In the case of plans offered by Canadian insurance companies, they take the form of an annuity issued by the insurer. In that case, the policy itself is the retirement plan.

n14

As a technical matter, the penalty is payable by the individual, rather than the plan itself.

n15

DPSPs are always organized as trusts and are described in more detail in Exhibit B.

n16

TFSAs are analogous to Roth IRAs in many respects. They are targeted at lower-income individuals to whom benefits payable under retirement plans registered with the CRA might reduce publicly funded retirement benefits otherwise available to those individuals.

n17

RESPs are similar in purpose and function to "section529 plans" under United States law.

n18

Each type of plan is described in more detail in Exhibit C.

n19

This definition of an "investment in a policy or contract" is essentially the same as those contained in *sections 72(c)(1)* and 72(e)(6).

n20

This would include a Canadian driver's license and comparable documentation.

n21

We do object to one of the listed indicia of United States nexus -- namely, the existence of "a P.O. address that is the sole address on file with respect to the account holder." Many holders of Canadian insurance policies or annuities reside in rural communities in which there are no street addresses and have only post office box or similar addresses. There is no reason that the

mere existence of such an address should be treated as any evidence of a connection between the policyholder and the United States. ***We urge you to drop P.O. addresses as one of the indicia of United States nexus.***

n22

A summary of the relevant provisions of PIPEDA is attached as Exhibit D.

n23

In all likelihood, there would be a significant number of policyholders who our members would be unable to contact because of the lack of a current mailing address. In this regard, we note that some of the assumptions underlying the Notice with respect to contacts between an FFI and its account owners, which we infer were based on the bank-depositor model, may not apply to life insurance companies and their policyholders. The relationship between an insurance company and its policyholder is different from that between a depository bank and its customer. In the latter case, the bank normally has an ongoing relationship with the customer in the form of deposits, withdrawals, monthly statements, and other periodic communications relative to the depository relationship. In contrast, after an insurance contract is executed, an insurance company may have only limited contact (if that) with the policyholder over a substantial period of years. The limited contact with a policyholder is consistent with the fact that a life insurance contract or other similar contract is not an ongoing transaction such as the deposit bank relationship. Instead, the relationship involves two distinct events, acquisition and payout, the occurrences of which may be decades apart. Even in cases in which periodic premiums are made or periodic policy amounts are paid, such premiums or payments often are made through electronic transfers from or to a designated bank account, rather than from or to the policyholder's mailing address. Thus, a life insurance company is less likely than a bank or other type of FFI to have a current address for a policyholder.

n24

Our members are willing and able to search their electronic files for indicia of United States status for their policyholders and to make solicitations for identification information to their policyholders. However, as noted above, obtaining the cooperation of millions of pre-existing policyholders to provide the requisite identification information within either two or five years of the implementation of an FFI agreement simply would be an impossible challenge.

n25

As noted above, documentation should be acceptable if it is issued by a governmental entity and shows the name and residence of the applicant. Due to Canadian Privacy Law issues, we request that the issuing insurance company not be required to obtain and retain a copy of the

identification, but instead just be required to record that it has reviewed and accepted the proffered documentation.

n26

The views of the provinces that have enacted privacy legislation may also need to be obtained.

n27

The federal Privacy Commissioner has been apprised of some of the issues raised by Chapter 4, but we do not yet know what the response will be to the issues raised by the intersection of the Chapter 4 requirements and PIPEDA. In addition, we note that it may take years for any privacy challenge relating to Chapter 4 disclosure to be resolved in the Canadian courts.

n28

But see Section II.B.3. of the Notice, which discusses certain “small-family trusts.”